

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RHOBAR, INC., RHOBAR DEVELOPMENT  
ASSOCIATES, LLC., ACKERLY ASSOCIATES,  
LLC., SILVER HUNTINGTON ENTERPRISES,  
LLC., and SILVER HUNTINGTON REALTY, LLC.,

Plaintiffs,

-against-

HOWARD SILVER, 2 ON THE AISLE, INC.,  
DAVID A. KAMINSKY & ASSOCIATES, P.C.,  
MARTIN G. DOBIN, ESQ., a/k/a JERRY DOBIN,  
ESQ., and ELLIOT J. HURDY,

Defendants.

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DAVID A. KAMINSKY & ASSOCIATES, P.C.,  
MARTIN G. DOBIN, ESQ. a/k/a JERRY DOBIN,  
ESQ. and HOWARD SILVER,

Counterclaimants,

-against-

RHOBAR, INC., RHOBAR DEVELOPMENT  
ASSOCIATES, LLC., ACKERLY ASSOCIATES,  
LLC., SILVER HUNTINGTON ENTERPRISES,  
LLC., and SILVER HUNTINGTON REALTY, LLC.,

Counterdefendants.

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**PEOPLE:**

**PLEASE TAKE NOTICE** that said Plaintiffs and "Counterdefendants", by their attorneys, McDonough & Artz, P.C., hereby interpose the following reply to and in answer to the counterclaims and claims of Defendants' and Counterclaimants' Answer:

**REPLY AND ANSWER TO  
THE ANSWER WITH  
COUNTERCLAIMS**

Case No.: 07 CIV 6100

### **COUNTERCLAIMS**

1. Deny the allegations of paragraph (88) of the Answer with Counterclaims.
2. Deny the allegations of paragraph (89) of the Answer with Counterclaims.
3. Deny the allegations of paragraph (90) of the Answer with Counterclaims.
4. Deny the allegations of paragraph (91) of the Answer with Counterclaims.
5. Deny the allegations of paragraph (92) of the Answer with Counterclaims.
6. Deny the allegations of paragraph (93) of the Answer with Counterclaims.
7. Deny the allegations of paragraph (94) of the Answer with Counterclaims.
8. Deny the allegations of paragraph (95) of the Answer with Counterclaims.
9. Deny the allegations of paragraph (96) of the Answer with Counterclaims.
10. Deny the allegations of paragraph (97) of the Answer with Counterclaims.
11. Deny the allegations of paragraph (98) of the Answer with Counterclaims.
12. Deny the allegations of paragraph (99) of the Answer with Counterclaims.
13. Deny the allegations of paragraph (100) of the Answer with Counterclaims.
14. Deny the allegations of paragraph (101) of the Answer with Counterclaims.

### **AS AND FOR A FIRST AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS**

15. Plaintiffs and "Counterdefendants" repeat and reallege the allegations of paragraph (1) through paragraph (49) of the Complaint as if fully set forth herein.

### **AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS**

16. The Counterclaims fail to state a cause of action.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS**

17. The Counterclaims and Claims alleged in the Answer fail to set forth claims upon which relief may be granted.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS**

18. The Counterclaims and claims in the Answer are barred by the doctrine of unclean hands.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS**

19. The Counterclaims are barred by Defendants waiver, through its acts, failures to act and conduct.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS**

20. Defendants are estopped and barred from making the Counterclaims by its acts, failures to act and conduct.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS**

21. Defendants have failed in their duty to mitigate damages and, if fact, Defendants have increased any alleged damages by their acts and omissions.

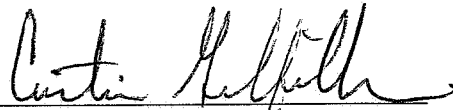
**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE TO ALL COUNTERCLAIMS**

22. That whatever damages Defendants claim to have sustained, if any, were caused or contributed to by the culpable conduct of the Defendants, including, want of care, negligence and knowing assumption of risk.

23. If the Defendants are entitled to recover any damages, such recovery must be diminished to the extent and to the degree that the above set forth culpable conduct bears on the total conduct causing the alleged damages.

**WHEREFORE**, the Plaintiffs and "Counterdefendants" demand judgment dismissing the counterclaims and for the relief set forth in Plaintiffs' Complaint, together with costs and disbursements of this action, legal fees, and such other and further relief as this Court deems just and proper.

Dated: August 1, 2007  
Binghamton, NY



McDonough & Artz, P.C.  
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Counterdefendants  
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Index No. 07 CIV 6100 Year 2007

STATE OF NEW YORK  
SOUTHERN DISTRICT OF NEW YORK

~~RHOBAR, INC., RHOBAR DEVELOPMENT ASSOCIATES, LLC, ACKERLY ASSOCIATES, LLC, SILVER HUNTINGTON ENTERPRISES, LLC, and SILVER HUNTINGTON REALTY, LLC,~~  
Plaintiffs,

vs.

HOWARD SILVER, 2 ON THE AISLE, INC., DAVID A. KAMINSKY & ASSOCIATES, P.C., MARTIN G. DOBIN, ESQ. a/k/a JERRY DOBIN, ESQ., and ELLIOT HURDY,

Defendants.

DAVID A. KAMINSKY & ASSOCIATES, P.C., MARTIN G. DOBIN, ESQ. a/k/a JERRY DOBIN, ESQ., and HOWARD SILVER,

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~~RHOBAR, INC., RHOBAR DEVELOPMENT ASSOCIATES, LLC, ACKERLY ASSOCIATES, LLC, SILVER HUNTINGTON ENTERPRISES, LLC and SILVER HUNTINGTON REALTY, LLC,~~  
Counterdefendants.

REPLY AND ANSWER TO THE ANSWER WITH COUNTERCLAIMS

McDONOUGH & ARTZ, P.C.

Attorneys for Plaintiffs and Counterdefendants

Post Office Address

P.O. Box 1740  
BINGHAMTON, NEW YORK 13902-1740  
(607) 772-6070

To:

Signature (Rule 130-1.1 a)

Attorney(s) for

Print name beneath

Service of a copy of the within

is hereby admitted

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐ NOTICE OF ENTRY

that the within is a (certified) true copy of a entered in the office of the clerk of the within named court on

☐ NOTICE OF SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the judges of the within named Court,

at on

, at

M.

Dated:

Yours, etc.,

McDONOUGH & ARTZ, P.C.

Attorneys for

Post Office Address

To

P.O. Box 1740